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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

ERIC BENEDICT, RICHARD BOWDERS, and
 KILRICANOS VIEIRA, on behalf of themselves
 and classes of those similarly situated,

Plaintiffs,

v.

HEWLETT-PACKARD COMPANY,

Defendant.

ERIC BENEDICT,

Counterdefendant,

v.

HEWLETT-PACKARD COMPANY,

Counterclaimant.

) Case No. C13-0119-LHK

)
) **DEFENDANT HEWLETT-PACKARD**
) **COMPANY'S ADMINISTRATIVE**
) **MOTION TO FILE UNDER SEAL**
) **MATERIALS RELATED TO ITS**
) **OPPOSITION TO PLAINTIFFS' MOTION**
) **FOR CONDITIONAL FLSA COLLECTIVE**
) **ACTION CERTIFICATION**

)
) Date: February 13, 2014
) Time: 1:30 p.m.
) Courtroom: 8, 4th Floor
) Judge: Hon. Lucy H. Koh

NOTICE OF MOTION AND MOTION

Pursuant to the amended Civil L.R. 79-5 (effective October 1, 2013) and this Court's December 1, 2011 Standing Order Regarding Motions to File Under Seal, Defendant Hewlett-Packard Company ("HP") hereby moves to file under seal, pursuant to Civil L.R. 79-5 and for good cause shown, the items identified in the table below, which are being filed in connection with HP's Opposition to Plaintiffs' Motion for Conditional FLSA Collective Action Certification. This motion is based on the Notice of Motion, Motion and Supporting Declaration of Becky Simeon. Pursuant to Civil L.R. 79-5(d)(2), HP is supplying a courtesy copy to the Court of the administrative motion, declaration, proposed order, and both the redacted and unredacted versions of all documents sought to be sealed, in accordance with Civil L.R. 5-1(e)(7).

LEGAL ARGUMENT

I. Grounds for Sealing HP's Confidential and Sensitive Customer and Employee Information

The legal standard for sealing documents accompanying a nondispositive motion is that the requesting party must show “good cause” to submit the documents under seal. *See Pintos v. Pac. Creditors Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010); *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Good cause exists to protect HP’s confidential and sensitive customer and employee information that HP has presented in its Opposition to Plaintiffs’ Motion for Conditional FLSA Collective Action Certification (“Opposition”).

Here, HP’s Opposition is a nondispositive motion, and the narrowly tailored redactions it seeks do not obscure the thrust of HP’s assertions. Instead, HP seeks to redact only limited instances of confidential and proprietary information consisting of: (a) HP’s employees’ personal information, including performance reviews and salary information; and (b) information identifying HP’s customers, customer contacts, and the particular services it provides for them. Because of the highly competitive nature of HP’s business and HP’s obligations to safeguard its employees’ and customers’ confidential information, HP in the normal course of business treats as confidential and takes reasonable steps to limit the disclosure of such information. *See Declaration of Becky Simeon* (“Simeon Decl.”) ¶ 6. Public disclosure of such materials could cause HP irreparable competitive harm and/or violate the privacy interests of its employees.

An employee’s sensitive personal information such as their salary or sensitive personal information contained in a performance review may be properly maintained as confidential. *See In re High-Tech Emp. Antitrust Litig.*, 11-CV-02509-LHK, 2013 WL 163779, at *8 (N.D. Cal. Jan. 15, 2013) (finding good cause to file certain material under seal because it contained “confidential compensation information such as salaries, stock options, and other benefits.”); *see also Dynetix Design Solutions Inc. v. Synopsys Inc.*, C 11-CV-05973 PSG, 2013 WL 2285210, at *1 (N.D. Cal. May 23, 2013) (granting a request to seal a performance review containing sensitive personal information). This Court has recognized the propriety of redacting customer identifying information

1 to protect the interests of the non-party customer and also the party, which could suffer harm from
2 the disclosure of information that could be used to solicit its customers. *See Kowalsky v. Hewlett-*
3 *Packard Co.*, 5:10-CV-02176-LHK, 2012 WL 892427, at *2 (N.D. Cal. Mar. 14, 2012); *Dynetix*
4 *Design Solutions*, 2013 WL 2285210.

5 To defend itself against Plaintiffs' motion, HP is submitting documents to this Court that
6 contain confidential and proprietary information and it could cause HP competitive harm if such
7 information is released. Simeon Decl., at ¶ 6. The confidential and proprietary nature of the
8 information provides good cause for keeping the details under seal to avoid irreparable injury if they
9 were disclosed. *See* Simeon Decl. ¶ 6. The materials to be redacted or put under seal are very
10 limited and will not impact the public's ability to understand the substance of the issues or any
11 decision issued by the Court. HP thus respectfully requests that its motion to seal the materials set
12 forth in Table 1 below should be granted based on good cause shown, including because: (a) HP has
13 a compelling interest in keeping such information confidential; (b) the redactions are narrowly
14 tailored; and (c) there is no less restrictive means available.

15 Accordingly, HP seeks to file under seal (pursuant to Civil L.R. 79-5(d)) the following,
16 limited matters, reflected in Table 1, based on their references to confidential and sensitive
17 information containing or relating to employee salaries, employee performance reviews, and/or
18 customer identifying information.

TABLE 1	
What HP Seeks to File Under Seal	Attachment To Motion to Seal
HP's Opposition to Plaintiffs' Motion for Conditional FLSA Collective Action Certification: 3:3; 3:4; 6:27; 6:28; 7:4; 8:22; 11:4; 11:6; 11:12; 11:14; 11:17; 12:3; 12:7; 12:17; 12:20; 12:22; 12:27; 12:28; 13:2; 13:3; 13:6; 13: 10; 13:11; 13:14; 13:24; 14:1; 14:4-5; 14:9; 14:11; 14:12	Redacted Version as Exhibit A; Unredacted Version as Exhibit B.
Appendix of Hewlett Packard Declarations	Redacted Version as Exhibit C; Unredacted Version as Exhibit D.
Declaration of Juan Acosta: 1:11, 1:12, 1:14, 1:15, 1:16, 1:23, 1:27, 2:2, 2:5, 2:7, 2:12, 2:15, 2:20, 2:25, 2:26, 3:3, 3:16, 3:18, 3:19	
Declaration of Timothy Armstrong: 1:9, 1:10, 2:17, 2:18	
Declaration of Timothy E. Campbell: 1:10, 1:11, 1:16, 2:1, 2:4, 2:6	
Declaration of Steven Condry: 1:10, 1:12, 1:13, 1:21, 1:23, 2:11, 2:21, 3:4, 3:6, 3:14, 3:15, 3:21, 3:22	
Declaration of James E. Cooper: 3:15, 3:16	
Declaration of Brett Fairchild: 1:8, 1:9, 1:11, 1:12, 1:13, 1:14, 1:18, 1:19, 1:20, 1:21, 1:23, 1:24, 1:25, 2:1, 2:4, 2:8, 2:9, 2:12, 2:13, 2:14, 2:15, 2:16, 2:18, 2:19, 2:22, 2:23, 2:24, 2:25	
Declaration of Abdul Farid: 2:4, 2:5, 3:16	
Declaration of Nisanth Kochuveedu George: 2:7, 3:18, 3:19, 3:21, 3:25, 3:27, 4:1, 4:4, 4:5	
Declaration of Ross Ingles: 1:19, 1:24, 1:25, 1:26, 4:13	
Declaration of Brent Irmak: 4:21	
Declaration of Drew Jones: 1:13, 1:14, 1:16, 1:18, 2:7, 4:4, 4:5, 4:25	
Declaration of David King: 3:15	
Declaration of Bruce Knight: 1:16, 1:17, 1:18, 1:20, 1:22, 1:23, 2:1, 2:3, 2:4, 2:10, 2:27, 3:5, 3:6, 3:7, 3:8, 3:9, 3:15, 3:18, 3:19, 3:24, 3:25, 4:1, 4:3, 4:4	
Declaration of Leslie Lemish: 1:19, 1:21, 1:23, 2:2, 2:3, 3:17	
Declaration of Bill Looney: 1:12, 1:18, 1:21, 1:22, 1:24, 2:1, 2:2, 2:4, 2:6, 2:13, 2:14, 2:16, 2:17, 2:18, 2:20, 2:21, 2:22, 2:24, 2:26, 2:27, 3:2, 3:3, 3:8, 3:10, 3:11, 3:17, 3:23, 3:24, 4:7, 4:11	
Declaration of Stan Lundeen: 1:8, 1:12, 1:13, 1:14, 1:15, 1:18, 1:19, 1:20, 1:21, 1:22, 1:23, 2:20, 2:24, 3:20, 4:1, 4:4, 4:6, 4:7, 4:19	
Declaration of Matthew Martin: 1:10, 1:11, 1:12, 1:14, 1:15, 1:16, 1:17, 1:18, 1:19, 1:20, 1:21, 1:23, 1:24, 1:25, 2:1, 2:4, 2:5, 2:6, 2:9, 2:10, 2:11, 2:14, 2:22, 3:1, 3:8, 3:9, 3:12, 3:20, 3:24	
Declaration of Fabian Martiniez-Mendoza: 1:18,	

1	1:19, 1:20, 1:22, 1:24, 2:2, 2:3, 2:11, 2:14, 2:15, 2:16, 2:19, 2:25, 3:2, 3:6, 3:12, 3:16, 3:18, 3:21, 3:22, 4:9, 4:10, 4:11, 4:18, 4:26	
2	Declaration of Michael Miller: 1:5, 1:18, 1:19, 1:20, 1:21, 1:22, 1:23, 2:3, 2:4, 2:8, 2:9, 2:10, 2:15, 2:16, 2:17, 2:18, 2:19, 2:21, 2:22, 2:23, 2:24, 3:2, 3:5, 3:10, 3:12, 3:16, 3:18, 3:21, 3:22, 4:3, 4:6, 4:13, 4:17, 4:18, 4:19, 4:20, 4:21, 5:3, 5:17, 6:26, 7:4, 7:5, 7:7	
3	Declaration of Leighton Nakata: 1:24, 2:2, 2:3	
4	Declaration of Vito-Victor Passalacqua: 1:8, 1:9, 1:11, 1:13, 1:14, 1:15, 1:16, 1:18, 1:19, 1:21, 1:22, 1:24, 1:27, 2:1, 2:3, 2:4, 2:8, 2:9, 2:12, 2:15, 3:7, 3:15, 3:18, 3:19, 3:21	
5	Declaration of Ingrid Peterson: 1:7, 1:8, 1:9, 1:11, 1:12, 1:13, 1:14, 1:15, 1:18, 1:21, 1:22, 1:24, 1:25, 2:1, 2:3, 2:4, 2:5, 2:7, 2:14, 2:17, 2:18, 2:20, 2:21, 2:22, 2:23, 2:24, 2:25, 2:26, 2:27, 3:1, 3:2, 3:4, 3:5, 3:6, 3:7, 3:8, 3:9, 3:10, 3:13, 3:14, 3:16, 3:17, 3:18, 3:19, 3:21, 3:23, 3:24, 3:26, 4:2, 4:5	
6	Declaration of Steven Pocock: 1:8, 1:17	
7	Declaration of Michael Rogers: 1:27, 2:5, 2:6, 2:7, 2:8, 2:9, 3:4, 3:11, 3:12, 3:14, 3:15, 3:18, 3:25, 3:26, 3:27, 4:8, 4:9, 4:10, 4:12, 4:16, 4:17, 4:20, 4:24, 4:25, 4:26, 5:4, 5:7	
8	Declaration of Robert E. Skinner: 1:14, 1:15, 1:22, 2:12, 2:17, 3:5, 3:19	
9	Declaration of Joseph Howard Smith: 3:12, 3:14	
10	Declaration of Craig Stopar: 1:21, 1:22, 2:18, 2:19, 2:20, 2:21, 2:23, 2:27, 3:2	
11	Declaration of John Turpin: 1:11, 1:14, 1:15, 1:16, 1:18, 1:19, 1:20, 1:21, 1:24, 1:26, 2:9, 2:14, 2:17, 2:21	
12	Declaration of Leslie Thomas Vought II: 1:10, 1:20, 1:21, 1:22, 1:24, 1:25, 2:1, 2:24, 2:25, 3:1, 3:4, 3:6, 3:7, 3:10, 3:11, 3:26	
13	Declaration of Mark Wager: 1:19, 1:20, 2:6, 2:7, 2:8, 2:9, 2:10, 2:11, 3:2, 3:12, 3:13, 3:15, 3:25, 3:26, 4:7, 4:8, 5:2, 7:25	
14	Declaration of Thomas Walker: 1:8, 1:9, 1:10, 1:14, 1:16, 1:25, 1:27, 2:24, 2:25, 2:26, 3:1, 3:17, 3:25	
15	Declaration of Robert Wilcox: 1:19, 1:21, 2:3, 2:5, 2:6, 2:8, 3:3, 3:20, 3:21, 3:24, 3:25, 4:3, 4:14, 4:24, 4:26, 5:6, 5:7, 5:8	
16	Declaration of Thomas Yando: 1:21, 1:22, 1:23, 1:24, 1:25, 1:26, 2:4	
17	Declaration of Chris Zibell: 1:25, 2:4	
18	Exhibit H to the Lazerson Declaration (Bowders Deposition Exhibit 16): <u>[Requested to be sealed in its entirety.]</u>	Redacted Version as Exhibit E; Unredacted Version as Exhibit F.
19	Exhibit I to the Lazerson Declaration (Vieira Deposition): 156:9-10, 157:15, 157:25, 158:2, 158:8, 188:1, 188:3, 188:16, 189:11, 210:17-18, 210:22, 211:2-4, 211:8- 10, 211:13, 211:18, 212:20	Redacted Version as Exhibit G; Unredacted Version as Exhibit H.

Exhibit C to the Simeon Declaration (Performance Review) [Requested to be sealed in its entirety.]	Redacted Version as Exhibit I; Unredacted Version as Exhibit J.
Exhibit D to the Simeon Declaration (Performance Review) [Requested to be sealed in its entirety.]	Redacted Version as Exhibit K; Unredacted Version as Exhibit L.
Exhibit E to the Simeon Declaration (Performance Review) [Requested to be sealed in its entirety.]	Redacted Version as Exhibit M; Unredacted Version as Exhibit N.
Exhibit F to the Simeon Declaration (Performance Review) [Requested to be sealed in its entirety.]	Redacted Version as Exhibit O; Unredacted Version as Exhibit P.
Exhibit G to the Simeon Declaration (Performance Review) [Requested to be sealed in its entirety.]	Redacted Version as Exhibit Q; Unredacted Version as Exhibit R.

Dated: December 20, 2013

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